

MONTANA LEGISLATIVE HISTORY

Chapter 244 19 93

Bill H _____ S 282 Original bill & history ✓ C

H. Committee on Natural Resources

Hearing Date(s) Mar 10 ✓ C

_____ C

_____ C

_____ C

Date Out Mar 11 ✓ C

S. Committee on Natural Resources

Hearing Date(s) Feb 17 ✓ C

_____ C

_____ C

_____ C

Feb 18 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

1/30	FISCAL NOTE REQUESTED		
2/06	FISCAL NOTE RECEIVED		
2/06	FISCAL NOTE PRINTED		
2/17	HEARING		
2/18	REVISED FISCAL NOTE REQUESTED		
2/19	COMMITTEE REPORT—BILL PASSED		
2/20	2ND READING PASSED	36	14
2/20	REVISED FISCAL NOTE RECEIVED		
2/22	3RD READING PASSED	36	12
2/22	REVISED FISCAL NOTE PRINTED		
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO NATURAL RESOURCES		
2/23	FIRST READING		
3/24	HEARING		
3/29	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED	84	16
4/01	3RD READING CONCURRED	78	21
	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS CONCURRED	50	0
4/06	3RD READING AMENDMENTS CONCURRED	50	0
4/13	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 460		
	EFFECTIVE DATE: 04/21/93		

SB 281 INTRODUCED BY FRITZ, ET AL.

PROTECT RIGHTS OF MINORS AND CREATE CHILDREN'S ADVOCATE
OFFICE

1/30	INTRODUCED		
1/30	REFERRED TO JUDICIARY		
1/30	FIRST READING		
2/03	REFERRERRED TO RULES		
2/05	HEARING		
2/05	TABLED IN COMMITTEE		

SB 282 INTRODUCED BY SWYSGOOD, ET AL.

CLOSE JEFFERSON RIVER AND MADISON RIVER BASINS TO FURTHER
CONSUMPTIVE APPROPRIATIONS

1/30	INTRODUCED		
1/30	REFERRED TO NATURAL RESOURCES		
1/30	FIRST READING		
1/30	FISCAL NOTE REQUESTED		
2/08	FISCAL NOTE RECEIVED		
2/09	FISCAL NOTE PRINTED		
2/17	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	50	0
2/22	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO NATURAL RESOURCES		
2/23	FIRST READING		
3/10	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	96	0
3/16	3RD READING CONCURRED	96	3

RETURNED TO SENATE
 3/24 SIGNED BY PRESIDENT
 3/25 SIGNED BY SPEAKER
 3/30 TRANSMITTED TO GOVERNOR
 4/01 SIGNED BY GOVERNOR
 CHAPTER NUMBER 244
 EFFECTIVE DATE: 04/01/93

SB 283 INTRODUCED BY WATERMAN
 GENERALLY REVISE INCOME TAX AND PROPERTY TAX LAWS AND IMPOSE
 SALES TAX

1/30 INTRODUCED
 1/30 REFERRED TO TAXATION
 1/30 FIRST READING
 1/30 FISCAL NOTE REQUESTED
 2/09 FISCAL NOTE RECEIVED
 2/10 HEARING
 2/12 FISCAL NOTE PRINTED
 3/31 MISSED TRANSMITTAL DEADLINE
 4/24 TABLED IN COMMITTEE

SB 284 INTRODUCED BY WELDON, ET AL.
 EXTEND PERMIT AUTHORITY OF DEPARTMENT OF HEALTH AND
 ENVIRONMENTAL SCIENCES TO UNDERGROUND TANK INSTALLERS
 BY REQUEST OF DEPARTMENT OF HEALTH AND ENVIRONMENTAL
 SCIENCES

1/30	INTRODUCED		
1/30	REFERRED TO NATURAL RESOURCES		
1/30	FIRST READING		
1/30	FISCAL NOTE REQUESTED		
2/05	FISCAL NOTE RECEIVED		
2/06	FISCAL NOTE PRINTED		
2/13	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	25	22
2/19	3RD READING FAILED	25	25
2/20	RECONSIDERED PREVIOUS ACTION AND PLACED ON 2ND READING ON 43RD LEG. DAY	30	20
2/23	2ND READING PASSED	24	23
2/24	3RD READING PASSED	30	19
	TRANSMITTED TO HOUSE		
3/01	REFERRED TO NATURAL RESOURCES		
3/01	FIRST READING		
3/10	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	84	11
3/16	3RD READING CONCURRED	81	19
	RETURNED TO SENATE		
3/20	SIGNED BY PRESIDENT		
3/21	SIGNED BY SPEAKER		
3/22	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 200		
	EFFECTIVE DATE: 03/26/93		

SENATE BILL NO. 282

INTRODUCED BY SWYSGOOD, TASH

IN THE SENATE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 19, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 11, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 13, 1993	SECOND READING, CONCURRED IN.
MARCH 16, 1993	THIRD READING, CONCURRED IN. AYES, 96; NOES, 3.
MARCH 17, 1993	RETURNED TO SENATE.

IN THE SENATE

MARCH 18, 1993	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *282*
2 INTRODUCED BY *Surgeon Tash*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLOSING THE JEFFERSON
5 RIVER BASIN AND MADISON RIVER BASIN TO FURTHER CONSUMPTIVE
6 APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER,
7 CERTAIN STORAGE PROJECTS, AND DOMESTIC, MUNICIPAL, AND STOCK
8 USES; NULLIFYING CERTAIN WATER RESERVATIONS IN THE JEFFERSON
9 RIVER BASIN AND MADISON RIVER BASIN; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Definitions. Unless the
14 context requires otherwise, in [sections 1 through 3], the
15 following definitions apply:

16 (1) "Application" means an application for a beneficial
17 water use permit pursuant to 85-2-302 or a water reservation
18 pursuant to 85-2-316.

19 (2) "Ground water" means water that is beneath the land
20 surface or beneath the bed of a stream, lake, reservoir, or
21 other body of surface water and that is not immediately or
22 directly connected to surface water.

23 (3) "Jefferson River basin" means the drainage area of
24 the Jefferson River and its tributaries above the confluence
25 of the Jefferson and Missouri Rivers.

1 (4) "Madison River basin" means the drainage area of
2 the Madison River and its tributaries above the confluence
3 of the Madison and Jefferson Rivers.

4 (5) "Nonconsumptive use" means a beneficial use of
5 water that does not cause a reduction in the source of
6 supply and in which substantially all of the water returns
7 without delay to the source of supply, causing little or no
8 disruption in stream conditions.

9 NEW SECTION. Section 2. Basin closure -- exceptions.

10 (1) As provided in 85-2-319 and subject to the provisions of
11 subsection (2) of this section, the department or the board
12 may not process or grant an application for a permit to
13 appropriate water or for a reservation to reserve water
14 within the Jefferson River basin or Madison River basin.

15 (2) The provisions of subsection (1) do not apply to:

16 (a) an application for a permit to appropriate ground
17 water;

18 (b) an application for a permit to appropriate water
19 for a nonconsumptive use;

20 (c) an application for a permit to appropriate water
21 for domestic, municipal, or stock use;

22 (d) an application to store water during high spring
23 flows; or

24 (e) temporary emergency appropriations as provided for
25 in 85-2-113(3).

1 NEW SECTION. **Section 3.** Certain reservations of no
2 force and effect. In accordance with the board's reservation
3 order of June 30, 1992, the water reservations granted to
4 the department of health and environmental sciences and the
5 department of fish, wildlife, and parks in the upper
6 Missouri River basin under 85-2-316 are of no force and
7 effect in the Jefferson River basin or Madison River basin.

8 NEW SECTION. **Section 4.** Codification instruction.
9 [Sections 1 through 3] are intended to be codified as an
10 integral part of Title 85, chapter 2, part 3, and the
11 provisions of Title 85, chapter 2, part 3, apply to
12 [sections 1 through 3].

13 NEW SECTION. **Section 5.** Applicability. [This act]
14 applies to all applications received by the department of
15 natural resources and conservation after [the effective date
16 of this act].

17 NEW SECTION. **Section 6.** Effective date. [This act] is
18 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0282, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: This bill proposes a permanent legislative closure for the Jefferson River Drainage Basin (41G) and Madison River Drainage Basin (41F) and their respective tributaries, located in southwestern Montana. The closure would prohibit the Department or Board of Natural Resources and Conservation from processing or granting any applications for beneficial water use permits for consumptive surface water uses or applications for reserved water. The closure would not apply to permit applications for groundwater; nonconsumptive uses; permit applications for domestic, municipal or stock uses; water stored during high spring flows; or temporary emergency appropriations. It also nullifies those certain water reservations granted on June 30, 1992, by the Board of Natural Resources and Conservation to the Departments of Fish, Wildlife and Parks, and Health and Environmental Sciences.

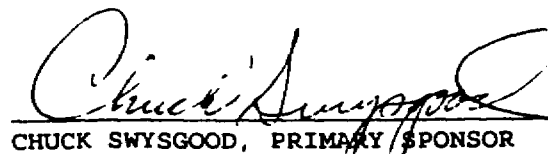
ASSUMPTIONS:

1. This proposed bill essentially closes the two sub-basins to any consumptive surface water permit or reserved water applications with certain exceptions.
2. In the two sub-basins the Department of Natural Resources and Conservation (DNRC) received and issued 48 (61%) consumptive and 31 (39%) nonconsumptive surface water permits during the period July 1, 1973 to January 29, 1993 for an annual average of 4 per year.
3. For the past three calendar years (1990-91 and 92) DNRC issued 0 (0%) consumptive and 7 (100%) nonconsumptive surface water permits for an average per year for this three year period of 2.3.
4. In the calendar year 1992, DNRC issued only one nonconsumptive permit in the closure area, which is .2% of the total water use permits issued state wide in 1992.
5. Should the bill be enacted, the DNRC workload in the Jefferson and Madison River Drainage Basins (41G) and (41F) would essentially remain the same as it has during the past three years.
6. The bill closes the Jefferson and Madison river basins to further consumptive appropriations and nullifies the Department of Fish, Wildlife and Parks and the Department of Health and Environmental Sciences instream flow reservations in those basins, which were granted by the Board of Natural Resources and Conservation on June 30, 1992. The investment of staff time and financial resources over many years would be negated.

FISCAL IMPACT:

None

 2-6-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-9-93
CHUCK SWYSGOOD, PRIMARY SPONSOR DATE

Fiscal Note for SB0282, as introduced

SB 282

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on February 17, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 282, SB 340, SB 363
Executive Action: None.

HEARING ON SB 282

Opening Statement by Sponsor:

Senator Swysgood, Senate District 37, stated that SB 282 is a bill to close the Jefferson River and Madison River basins to further consumptive appropriations, except appropriations for ground water, certain storage projects, and domestic, municipal, and stock uses. Section 3 nullifies certain water reservations in the Jefferson River basin, which Senator Swysgood commented would be the only contentious part of the bill as it relates to

the reservation process. He noted that other bills on basin closures are somewhat similar in context but different in their approach. He read to the Committee the Order from the Board in the final draft of the Missouri River Basin.

Proponents' Testimony:

John Bloomquist, representing various water users in the Jefferson basin, stated his support for SB 282, and noted his clients feel the basin should be closed and the Board's Order put into effect. He noted amendments would be offered to close the basin and ignore the Board's Order and allow the Department of Fish, Wildlife and Parks to have the reservation. He urged the Committee to think carefully about that because of the message that will be sending.

Jo Brunner, executive director, Montana Water Resources Association, stated many members of her association live in the affected area, and they are strong supporters of the basin closure and SB 282.

Lorna Frank, Montana Farm Bureau, said their members in Beaverhead and Madison counties feel strongly that SB 282 should be passed as it is and the river basins closed.

Holly Franz, representing Montana Power Company, stated her support of the concept of basin closure in the Madison and Jefferson River areas.

Opponents' Testimony:

Stan Bradshaw, Montana Trout Unlimited, stated their opposition to SB 282. He noted Section 3 is offensive in that it declares only two of the reservations granted in that basin null and void: the Department of Fish, Wildlife and Parks and the Department of Health and Environmental Sciences (DHES). He asked why only the non-consumptive reservations are being singled out if closure is really about protecting existing users from further depletions in the basin. He noted that Senator Swysgood appeared at a public hearing on the reservation and testified in emphatic terms about the Fish, Wildlife and Parks reservation. Mr. Bradshaw said that while part of Senator Swysgood's testimony in passing addressed the over-appropriation issue, the primary thrust of his testimony was that he does not like or trust Fish, Wildlife and Parks and that he does not want them involved in water management discussions in the basin. He concluded the only reason for this closure is that it is punitive to Fish, Wildlife and Parks and DHES. Mr. Bradshaw said if the basin is closed, it should be closed to protect against further depletions in over-appropriated basins.

Bob Lane, Chief Legal Counsel, Department of Fish, Wildlife and

Parks, presented to the Committee prepared testimony in opposition to SB 282 (Exhibit #1).

Mark Daspit, Montana Audubon Legislative Fund, stated their opposition to SB 282 for the same reasons as outlined by Stan Bradshaw of Montana Trout Unlimited.

Questions From Committee Members and Responses:

Senator Bartlett asked Senator Swysgood why the non-consumptive uses are singled out in SB 282. Senator Swysgood said the uses singled out are in direct relation to what the Board of Natural Resources said in its order dated June 30, 1992. He said a basin closure allows no further permits to be issued for surface water rights, so any water available after the adjudication process will be available with a priority date of July 1, 1985 and it will be for instream flows.

Senator Kennedy asked if the purpose was to get water for later reservation rights. Senator Swysgood said it was not.

Senator Bianchi said there are some people who filed for water rights after 1985. He asked if they would be affected under the basin closures, and if it is Senator Swysgood's intent to get more water for them. Senator Swysgood said that was not his intent.

Senator Weeding asked if it was the intent of SB 282 to allow the conservation districts to perfect those reservations using Fish, Wildlife and Parks and the Department of Health's water.

Senator Swysgood said he intended to put in law what the Board of Natural Resources directed regarding these particular reservations in the Board's order dated June 30, 1992.

Senator Weeding asked Gary Fritz if reserved waters are exempt from a closure. Gary Fritz, Department of Natural Resources and Conservation (DNRC), said the way he interprets SB 282 is that the only preclusion for this closure would be for reservations adopted in the future and that the closure would not apply to the consumptive reservations already adopted by the Board.

Mr. Fritz said conservation districts would not lose their reservations if SB 282 passed, but if the basin were closed without Section 3 in the bill, that would be the case. This bill discriminates between instream and consumptive reservations because it indicates that the instream reservations would be null and void but the consumptive reservations for the conservation districts are not mentioned and presumably not null and void. He noted that Section 3 of SB 282 as it reads now is not the same as the Board's order.

Senator Keating asked John Bloomquist how he perceived the basin

closure with regard to the Board's order. Mr. Bloomquist said when the order was issued, it corresponded with Senator Swysgood's language.

Senator Keating asked if there would be greater instream flow when there is a lot of water. Mr. Bloomquist said there has been very little new permitting after 1985, with most of the permits applying to ground water.

Senator McClernan asked how severe the over-appropriation is. Gary Fritz said if someone came to the Department and asked that the basin be closed, they would have to go through an exhaustive water availability study to determine how often the basin is water short and whether or not there is additional water to be appropriated. He said DNRC does not know the answer to that question right now. He stated there is some severe de-watering on the Jefferson at times, but whether that warrants basin closure, he is not prepared to say.

Senator Bartlett questioned the Board's intent in including the condition regarding the conservation district reservations under discussion and the DHES and FWP reservations. She asked what they wanted to accomplish with this kind of condition.

Robert Throssell, retained counsel for the Board of Natural Resources, stated all discussions on the Board's decisions were public discussions and are a matter of public record. Considerable testimony was presented by FWP about the water, and there was a question of need within the context of the reservation process. Granting the reservation to the instream reservants would meet those needs because of testimony regarding water availability. He said the Board fashioned a closure provision that is in the instream portions; it is the same closure provision that applies to the conservation district.

Senator Bartlett said it was her understanding that the Board would grant this reservation but was uncertain if the reservation would meet the need that had been expressed in testimony. She added that during a basin closure, the reservation essentially is preempted.

Mr. Throssell said the testimony of water rights holders on these streams was that there was no water. The Board said if that was true, the basin would be closed but if the basin is left open for other appropriators, then the instream flows would have the 1985 priority.

Senator Bianchi asked Mr. Throssell if he agreed with the interpretation if the basin were closed, the conservation districts that do not have a water plan would also lose their reservations. Mr. Throssell said he did not believe they would lose their reservations but they would be suspended.

Senator Bianchi asked if the Board reopened the basin, the Fish,

Wildlife and Parks and Department of Health and Environmental Sciences' reservations would not be included since they are excluded in the statute. Mr. Throssell said he believes that is right.

Senator Weeding asked Mr. Bloomquist about how the bill would affect storage. Mr. Bloomquist said it was his opinion that in this bill, new storage was exempted. As far as FWP and DHES reservations, this bill would negate those to irrigation.

Senator Bartlett asked Mr. Bradshaw if he agreed with Mr. Throssell's understanding as to why the Board included the condition regarding consumptive and non-consumptive reservations in the order.

Mr. Bradshaw said not entirely, although there may have been some deliberations that he did not hear. A point made by agricultural objectors to FWP was that they did not like the idea of FWP being able to object and change proceedings that might occur in the basin. They fear FWP might obstruct changes that other irrigators might make.

Mr. Kennedy asked Mr. Bradshaw if he would support the bill with the Fish, Wildlife and Parks amendments. Mr. Bradshaw said he would.

Closing by Sponsor:

Senator Swysgood closed. He stressed that water should be protected as it is an important resource for Montana. He concluded that he had an amendment he would introduce during executive action.

HEARING ON SB 363

Opening Statement by Sponsor:

Senator Bianchi, sponsor, said he is presenting SB 363 because of numerous meetings he attended with water users discussing instream flows and other related procedures. SB 363 is for a statewide closure of all basins in the state with exceptions noted in the bill that still have available water for appropriation. It closes all basins at this point in time until the adjudication process has been completed. When the basin opens up again, DNRC can determine if there is further water to appropriate. He concluded SB 363 would increase the value of water rights that people currently have.

Proponents' Testimony:

Stan Bradshaw, Montana Trout Unlimited, said the time has come

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 2/17/93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	✓		
Sen. Hockett	✓		
Sen. Bartlett	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Keating	✓		
Sen. Kennedy	✓		
Sen. Swift	✓		
Sen. Sunsgaard	✓		
Sen. McCernan	✓		
Sen. Treitz	✓		
Sen. Weeding	✓		
Sen. Weldon	✓		

SB 282

February 17, 1993

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the Senate Natural Resources Committee**

The Department of Fish, Wildlife & Parks believes that basin closures, in the proper circumstances, are a desirable, effective and even necessary water management tool. The Jefferson River and Madison River drainages are prime candidates for consideration of basin closures. Rarely is sufficient water available for new permits in these basins, particularly during the irrigation season.

Under normal circumstances, the department would favor the basin closures proposed in SB 282. The closure would protect irrigation and other consumptive use rights and would normally protect the instream flow reservations of the department and the Department of Health and Environmental Sciences that were recently granted by the Board of Natural Resources and Conservation.

The department is particularly troubled with the fundamental unfairness of Section 3 that could completely take away the water reservations recently granted to this department and the Department of Health and Environmental Sciences.

Even if Section 3 was taken out of the bill there is a problem. Because of a condition in the Board's order of June 30, 1992, the reservations granted would no longer exist for practical purposes

under the present version of SB 282. This condition states:

The DFWP reservation shall have no force and effect in any basin, subbasin, drainage, subdrainage, stream, or single source of supply for the period of time and for any class of uses for which permit applications are precluded.

This condition, in conjunction with SB 282, would nullify the reservation process just recently completed for these drainages in the Upper Missouri River Basin above Fort Peck Dam. This whole basin includes approximately one-half the area and waters of the state. Section 3 of the bill would completely eliminate all instream reservations for fisheries, recreation and water quality.

Our agency spent over a half million license and federal excise tax dollars of sportsmen and women that were appropriated and approved by the legislature. The reservation process in the upper Missouri basin was supported by general fund appropriations of approximately \$1.3 million to DNRC to prepare an EIS and to conduct the extensive, lengthy and exhaustive hearing process. Of this amount, the Conservation Districts used general fund appropriations of about \$400,000 to prepare and advocate reservations for irrigation projects. Cities and towns received \$67,000.

The Board granted instream flow reservations in the upper Missouri River Basin to help protect water quality and the outstanding fishery and recreational values of the basin. Many of the rivers affected by this bill, including the Madison, Big Hole, and Beaverhead Rivers, have well deserved national and even international reputations. They are among the best in the world.

At the time the reservations were granted, the department recognized there were significant problems with the Board's condition. Now, in light of this bill and three other basin closure bills, the department believes that SB 202 presents an opportunity to take a careful look at the wisdom of the condition and Section 3. For the following reasons, the Board's condition and Section 3 put the advocates of instream flows and consumptive water users, including irrigators, in a "Catch-22" that harms both instream values and the interests of irrigators and other consumptive water users.

First, Section 3 or an interpretation of the Board's condition that would nullify, at least in part, the instream reservations when they are most needed is both fundamentally unfair and unwise and flies in the face of the granting of instream reservations. The Board concluded after a three year process, following the submittal of reservation applications, that instream flows were needed and in the public interest. In total, the department spent the better part of 10 years in the process. Section 3 and the condition frustrates the public's reliance and faith in a valid public process initiated by the legislature.

During the administrative hearing, holders of existing rights were concerned that their existing rights be protected, and they were. The department holds instream flow reservations on behalf of the public and asks that the public's rights be given this same recognition and protection. The public, through the department, is

entitled to play a role in future water use and management issues in the basin that would affect the fisheries resource. However, the combination of this bill and the Board's order or Section 3 will treat instream flows in a way that no one would consider treating any other vested water rights. They will have no protection under this bill as written. For example, the department could not object to a change in a point of diversion from a mainstem river to a tributary that would completely dewater the tributary and destroy the fishery.

Second, and perhaps more important, the condition or Section 3 may harm the future hopes and expectations of present water users. Users in water short basins hope and dream of someday improving water availability and water management. Although none of us knows exactly what the future may bring, improving water availability through new storage or more efficient delivery systems can only be achieved with capital investments. It is doubtful that irrigators alone can fund such projects by themselves. For future projects to be feasible, a partnership of all interests, including irrigation, fisheries and recreation, will almost inevitably be required. If state, and federal funds, are to be spent on fisheries and recreational benefits, then those benefits must be protected. The only way that instream values for fisheries and recreation can be assured of protection is through an instream flow reservation. These reservations are the one and only opportunity for recognizing and protecting instream values. If the reservations are nullified when they are most needed, this department will not be able to justify

spending money in any partnership to improve storage or delivery systems.

Third, if the condition or Section 3 means that the instream reservations would have no force and effect against any junior consumptive use permits, there is a significant problem. Instream flows would not be protected against any junior permits issued between July 1, 1985, and the date of closure of the basin. July 1, 1985, is the priority date of the Upper Missouri River Basin reservations. Thus at the moment of the basin closure, from a practical standpoint instream flow protection would disappear. These junior rights could then take water that had been protected by the senior instream flow reservations. The closure, in fact, would harm senior irrigation users as well as instream flows because water could be consumed that could not have been used before the closure. This turns the purpose of basin closures on its head. The Board could not have intended this result.

To give you an idea of the magnitude of this concern, there are approximately 557 permits issued or pending with a priority date after July 1, 1985 in the Upper Missouri River Basin above Fort Peck Dam. This includes 35 permits in the Madison and Jefferson River Basins.

The "no force and effect" condition in the Board's order is now proving in SB 282 that it has severe drawbacks. Section 3 goes will

beyond the Board's order and completely eliminates any instream reservations. These factors prevent all of the parties with a legitimate interest from being free to consider basin closures on the merits of the closures themselves. If Section 3 and the Board's condition are removed, then the department supports the closure. An amendment for this purpose is attached.

Without the proposed amendment, the department would have to oppose the bill but not the concept of a closure for the Jefferson River and Madison River Drainages.

PROPOSED AMENDMENT TO SB 282
FIRST (WHITE) COPY

EXHIBIT #1
DATE 2-17-93
SB-282

1. Page 1, line 8.
Following: "USES;"
Strike: "NULLIFYING"
Insert: "PROTECTING"

2. Page 3, line 1 through 7.
Strike: section 3 in its entirety
Insert: "NEW SECTION. Section 3. Validity of
reservations. The closure under [section 2]
does not render an instream reservation
granted by the board in its June 30, 1992,
order of no force and effect, notwithstanding
any condition to the contrary in that order.
The reservations are not affected or
diminished during the closure under [section
2]."

Sen. Grosfield replied to the draft letter Gary Fritz read. He said non-degradation, ambient water standards and water pollution were specifically left out of SB 280.

Sen. Swysgood said he would like to present the other side of the issue. He said he understood the process, respected it, but did not agree with it. SB 280 was a radical change in water policy in Montana and some people were uneasy with it even though the concept was good.

Vote:

The motion that SB 280 Do Pass CARRIED with Senators Swysgood and Tveit voting No.

EXECUTIVE ACTION ON SB 340

Motion/Vote: Sen. Doherty MOVED SB 340 DO PASS. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 282

Motion/Vote: Sen. Swysgood MOVED TO STRIKE SECTION 3 OF SB 282 AND RENUMBER THE SECTIONS. The motion CARRIED UNANIMOUSLY.

Motion/Vote: Sen. Swysgood MOVED SB 282 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 363

Motion:

Sen. Bianchi MOVED SB 363 DO PASS.

Discussion:

Sen. Grosfield said there was a statutory process to close streams, which was not used very often. He said statutory closure had occurred. He said there was also an administrative method, which seemed to be slower. He said it would be dangerous to jump to the conclusion of closing water development in the entire state. He said he supported looking at individual basins when appropriate.

Sen. Swysgood said there was a big difference between this bill and SB 282. He said SB 363 did not contain enough information to make those kind of adjustments.

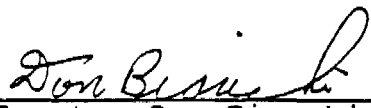
Motion/Vote: Sen. Grosfield made a SUBSTITUTE MOTION TO TABLE SB 363. The motion CARRIED with Sen. Bianchi voting No.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 18, 1993

MR. PRESIDENT:

We, your committee on Natural Resources having had under consideration Senate Bill No. 282 (first reading copy -- white), respectfully report that Senate Bill No. 282 be amended as follows and as so amended do pass.

Signed: 
Senator Don Bianchi, Chair

That such amendments read:

1. Title, lines 8 and 9.

Strike: "NULLIFYING" on line 8 through "BASIN;" on line 9

2. Page 3, lines 1 through 7.

Strike: Section 3 in its entirety

Renumber: subsequent sections

3. Page 3, lines 9 and 12.

Strike: "through 3" on line 9

Insert: "and 2"

Strike: "through 3" on line 12

Insert: "and 2"

-END-

Amendments to Senate Bill No. 282
First Reading Copy

Requested by Sen. Swysgood
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 17, 1993

1. Title, lines 8 and 9.

Strike: "NULLIFYING" on line 8 through "BASIN;" on line 9

2. Page 3, lines 1 through 7.

Strike: Section 3 in its entirety

Renumber: subsequent sections

3. Page 3, lines 9 and 12.

Strike: "through 3" on line 9

Insert: "and 2"

Strike: "through 3" on line 12

Insert: "and 2"

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 2-18-93

BILL NO. ^{SB}282

Motion/Vote: REP. GILBERT moved the amendments to SB 214. EXHIBITS 4 AND 5 The motion carried on a voice vote.

Motion/Vote: MOTION WAS MADE THAT SB 214 BE CONCURRED IN AS AMENDED. Motion carried.

EXECUTIVE ACTION ON SB 319

Motion: REP. EMILY SWANSON MOVED SB 319 BE CONCURRED IN.

Discussion: An updated fiscal note was distributed and discussed as well as a list of container sites which had been cited for illegal disposal activity. EXHIBIT 6

EXHIBIT 7, from John Geach, Department of Health and Environmental Sciences, Underground Storage Tanks Section, was also distributed for the committee's information.

Vote: SB 319 BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE ACTION ON SB 296

Motion: REP. RUSSELL FAGG MOVED SB 296 BE CONCURRED IN.

Discussion: EXHIBIT 8 was distributed for discussion in response to concerns raised by well-drillers. The committee further discussed the intent of the legislation.

Motion/Vote: REP GILBERT moved to modify the statement of intent by striking out the portion discussing the rotating basis when giving notice. REP HARPER added that language on Page 3, Line 8, should be reinstated. Motion carried.

Motion/Vote: MOTION WAS MADE THAT SB 296 BE CONCURRED IN AS AMENDED. The motion carried on a roll call vote, with REPS. FELAND, TOOLE, WAGNER, AND CHAIRMAN KNOX voting against the bill.

HEARING ON SB 282

Opening Statement by Sponsor:

SEN. CHARLES "CHUCK" SWYSGOOD , SD 37, Dillon, stated SB 282 closes the Jefferson River Basin and the Madison River Basin to further consumptive use and appropriations except those delineated in the legislation. He noted these two sub-basins have been over-appropriated for a long time and that this bill addresses the problem.

Proponents' Testimony:

Lorna Frank, Farm Bureau, stated the Bureau fully supported SB 282.

Holly Franz, Montana Power Company, spoke in support of the legislation.

Jo Brunner, Executive Director, Montana Water Resources Association, expressed the association's support for SB 282.

Bob Lane, Fish, Wildlife & Parks, supported the bill and noted the department's earlier concerns with other basin closure legislation. EXHIBIT 9

John Bloomquist, representing various water users in the Jefferson and Madison River Basins, stated his support for the bill. EXHIBIT 10

Gary Fritz, Department of Natural Resources, spoke in support of the legislation and noted the Jefferson and Madison River Basins have had serious water availability problems.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. SWYSGOOD closed testimony on SB 282 and urged committee support.

HEARING ON SB 231Opening Statement by Sponsor:

SEN. WILLIAM "BILL" YELLOWTAIL, SD 50, Wyola, opened testimony on SB 231, which would clarify the burdens of proof and standards of proof under which applications for beneficial water use permits, change authorizations, and reservations are processed pursuant to Montana water laws, and would clarify the process for extension of time for a water use permittee to complete conditions, and clarify the verification process for issuance.

Proponents' Testimony:

Don MacIntyre, Attorney, Montana Department of Natural Resources, presented technical data in support of the legislation. EXHIBIT 11

Opponents' Testimony: None.

Questions From Committee Members and Responses:

In response to a question from REP. FELAND, Mr Fritz noted this legislation would not affect water discharge permits, and would also not impact driller notification of water use applications.

Closing by Sponsor:

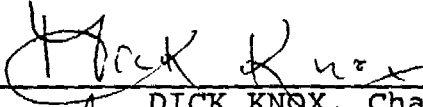
SEN. YELLOWTAIL closed by noting the legislation was a straightforward attempt to streamline the current process and make it more efficient.

EXECUTIVE ACTION ON SB 282

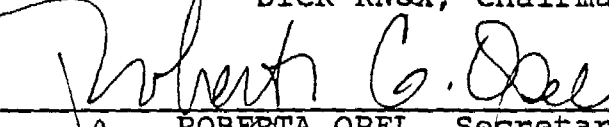
Motion/Vote: REP GILBERT MOVED SB 282 BE CONCURRED IN. Motion carried unanimously.

ADJOURNMENT

Adjournment: The meeting was adjourned at 8:15 pm.



DICK KNOX, Chairman



ROBERTA OPEL, Secretary



GAYLE CARPENTER, Transcriber

DK/ro

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE

3-10-93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	☒		
REP. ROLPH TUNBY, VICE CHAIRMAN	☒		
REP. JODY BIRD	☒		
REP. VIVIAN BROOKE	☒		
REP. RUSS FAGG	☒		
REP. GARY FELAND	☒		
REP. MIKE FOSTER	☒		
REP. BOB GILBERT	☒		
REP. HAL HARPER	☒		
REP. SCOTT ORR	☒		
REP. BOB RANEY	☒		
REP. DORE SCHWINDEN	☒		
REP. JAY STOVALL	☒		
REP. EMILY SWANSON	☒		
REP. HOWARD TOOLE	☒		
REP. DOUG WAGNER	☒		

HR:1993

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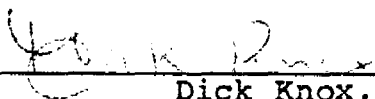
HOUSE STANDING COMMITTEE REPORT

March 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that Senate Bill 282 (third reading copy -- blue) be concurred
in.

Signed: _____


Dick Knox, Chair

Carried by: Rep. Tash

Committee Vote:

EXHIBIT 9
DATE 3-10-93
HB SB 282

SB 282
March 10, 1993

Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the House Natural Resources Committee

The department supports the concept of basin closures on the
Jefferson River and Madison River basins.

Our concern is with the impact of closures in the upper Missouri
River Basin on the instream water reservations granted by the Board
of Natural Resources and Conservation on June 30, 1992.

These reservations were granted for fisheries, recreation and water
quality with a priority date of July 1, 1985. Because of a
condition put on the reservations by the Board, the reservations
for instream purposes and for irrigation are partially nullified.

In testimony on three House bills already heard by this committee
and in testimony on this bill before a Senate committee, I have
explained the department's concern with the impacts of the Board's
condition and argued that it was now clear the Board's condition
was not good public policy. However, both the House and Senate
have decided so far to defer to the Board on this issue. The
department can accept this decision. It preserves the status quo
of the reservations as granted by the Board.

The department would strongly resist any attempts to amend this
closure bill to completely eliminate the water reservations granted

by the Board on the Jefferson and Madison River basins. I raise this point because this bill initially had a section that did completely undo the work of the Board by eliminating the water reservations. The Senate amended that section out.

The House and this committee have passed HB 395 which would close the Missouri River Basin above Morony Dam near Great Falls. HB 395 is identical to SB 282 except that it includes all of the Missouri River Basin above Great Falls. If HB 395 is approved, then SB 282 is not needed.

3/7/93
Hagenbarth Livestock
Jim Hagenbarth
P.O. Box 1128
Dillon, MT 59725

Representative Dick Knox
Chairman, Natural Resource Com.
Room 437
Capitol Station
Helena, MT 59620

EXHIBIT 10
DATE 3-10-93
HB SB 282

Re: Senate Bill 282

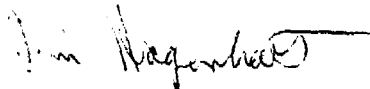
Dear Representaive Knox:

Our family has been puting to beneficial use water from the the Big Hole River, a tributary of the Jefferson River, since 1903 and water from Birch Creek, a tributary to the Big Hole since 1871. This water is used to irrigate crops and pasture, water livestock, charge underground storage and support wetlands, both natural and developed.

New appropriations on the Big Hole River have been minimal to say the least. There is no water to appropriate, and as a point in fact, there is no water to fulfill Fish and Game and DHES reservations. On Birch Creek, where the Fish and Game was granted a 10 cfs reservation, the appropriations of record are 129,780 acre feet and the average stream flow is 14,000 acre feet annually. To boot, the last 8 miles of the designated reach have been dry at least ten months of the year for the last 100 years. There is no water, reservations cannot make water, and the closures that would be granted by Senate Bill 282 are certainly in order and desired. I ask for your support and that of the committee for Senate Bill 282.

Please make available a copy of this letter to all committee members.

Thanks,



Jim Hagenbarth

cc. Senator Swysgood
Representative Tash
Montana Stockgrowers

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. SB-282
DATE 3/10/93 SPONSOR(S) SEN. SWYZGORD

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Lorna Frank	Farm Bureau	X	
J. Brunner	MUPA	X	
John Blomquist	Wholesale Water Users and Various Water Users in Jeff.	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.